IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 6 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

COMMISSIONER OF INCOME-TAX

Versus

BOMIN PVT.LTD.

Appearance:

1. INCOME TAX REFERENCE No. 6 of 1990

MR MANISH R BHATT for Petitioner No. 1

MR TANVISH U BHATT for Petitioner No. 1

MR HARSHAD J SHAH for Respondent No. 1

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE K.M.MEHTA

Date of decision: 11/12/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

At the instance of the revenue, the following questions have been referred to this Court for its opinion under the provisions of Section 256(2) of the Income-tax, 1961 (hereinafter referred to as the "Act") by the Income-tax Appellate Tribunal, Ahmedabad Bench "C".

"(1) Whether on the facts and in the circumstances of case, the Tribunal has correctly reached a conclusion that the patterns which were purchased by the assessee during the years 1979,1980 and 1981 should be deemed to have been discarded, and hence deductions on such patterns should be allowed, and deduction on account of patterns written off upto the year 1979 should be allowed to the assessee as claimed?

(2) Whether the facts and material on record justified the conclusion reached by the Tribunal that the assessee had a case to write off the patterns since they had become totally useless and unserviceable?

(3) Whether the finding reached by the Tribunal in partially allowing the appeal of the assessee is such as can be sustained on the material on record?"

2. We have heard learned Standing Counsel Shri Tanvish Bhatt for the applicant-revenue and learned advocate Shri H.J. Shah for the respondent-assessee.

3. The circumstances in which the aforestated questions have been referred to this Court for its opinion are as under;

4. The assessee is a private limited Company manufacturing electric motors, monoblock pumps etc. For the purpose of manufacturing electric motors, monoblock pumps etc., the assessee was using patterns. During the assessment year 1982-83, the assessee had discarded certain patterns. The patterns being capital asset, depreciation was allowed on the cost of the patterns. Patterns worth Rs. 84,833/- had been written off during the said assessment year and the assessee had therefore claimed depreciation for the said amount.

5. The Assessing Officer disallowed the claim on the ground that though the patterns were being used by the assessee for last several years, during the earlier twelve years the said patterns were not written off but

they were written off during the relevant assessment year so as to see that an additional amount of expenditure is shown for the said year as the assessee had earned profits. The Assessing Officer was of the view that during the earlier years, when the assessee had suffered losses, the assessee did not write off the said patterns, possibly because the assessee was not likely to get any benefit by claiming additional expenditure during the said years.

6. Being aggrieved by the aforestated order passed by the Assessing Officer, the assessee filed an appeal before the C.I.T. (Appeals). The C.I.T. (Appeals) wanted to ascertain whether the patterns were in fact used by the assessee and whether the patterns had in fact became useless. As the patterns were being used since 1971 and the assessee had never written off the patterns, the C.I.T.(Appeals) had called for some further information and upon getting the information from the assessee, he was of the opinion that the assessee had failed to prove as to how many patterns had been in fact discarded. He, therefore, dismissed the appeal by upholding the assessment order with regard to non-allowance of deduction claimed by the assessee under the provisions of Section 32(1)(iii) of the Act for claiming the depreciation.

7. Being aggrieved by the dismissal of the appeal, the assessee filed an appeal before the Tribunal. The Tribunal considered the relevant facts including the fact that the patterns had become useless and they were properly written off by passing necessary book entries. The Tribunal also recorded the fact that the patterns had not only become useless because they had worn out but they had also become obsolete and, therefore, the assessee had rightly claimed depreciation under the provisions of Section 32(1) (iii). The appeal filed by the assessee was allowed by the Tribunal.

8. In the aforestated circumstances, this Court has to decide whether the Tribunal had rightly allowed the depreciation under the provisions of Section 32(1) (iii) of the Act.

9. This Court has also to decide whether the assessee had made out a case for writing off the patterns, as they had become totally useless and unserviceable.

10. We have heard the learned advocates and have considered the judgements delivered in the cases of

COMMISSIONER OF INCOME-TAX Vs. NAGARI MILLS LTD. reported in 227 I.T.R. 230 and McGAW-RAVINDRA LABORATORIES (INDIA) LTD. Vs. COMMISSIONER OF INCOME-TAX reported in 210 I.T.R. 1002 by this Court. At the time when the assessee claims depreciation under the provisions of Section 32(1)(iii), what the Assessing Officer has to consider is whether the conditions incorporated in the said sub-Section have been complied with. Looking to the law laid down by this Court in the aforestated two judgements, it is very clear that it is not for the Assessing Officer to use his wisdom for deciding whether a particular capital asset can be still used. Once all the conditions incorporated in the relevant Sub Section are satisfied, it is not for the Assessing Officer to decide whether the assessee should use or discard the capital asset which he considers to be useless or obsolete.

11. It is everyone's common knowledge that the society has witnessed immense progress in the last few decades as a result of the advancement in the fields of science and technology, computer, communication, etc. Scientific inventions and innovations have led to creation and development of several new products, designs and patterns. These fast changing developments have found its echo in industrial and manufacturing sectors as well. New, sophisticated and high-tech machineries have replaced old and obsolete equipments to achieve greater speed, efficiency, quality and output. In this fast changing scenario, which witnesses technological revolution at a fast pace, where old and obsolete technologies give way to highly sophisticated and extremely efficient machineries and products, it is natural that a particular machinery or equipment, which has become useless or obselete, is discarded and is replaced by a new one to derive a competitive edge over them and achieve better results. A prudent businessman, in the interest of his business, would never continue to use such old and outdated equipments and would instead go for new and the latest machines in the field to ensure higher production, better quality, lesser costs and higher profits.

12. Thus it is always for the assessee to decide as to whether he should use a particular machine which has become old and/or obsolete or should replace the same by a modern machine.

13. In the instant case, the assessee decided to write off some of the patterns which had been used by him for several years. Upon perusal of the order passed by

the Tribunal, it is also clear that in the past, the assessee had also repaired the patterns which had been discarded by him. Thus, it appears that the patterns had become sufficiently old. Moreover necessary entries in the books of accounts had also been passed by the assessee so as to satisfy the conditions incorporated in Section 32(1)(iii) of the Act for claiming depreciation in respect of the said patterns.

14. The Tribunal, in the course of its order, has also reproduced relevant portion of the judgement delivered by this court in the case of COMMISSIONER OF INCOME-TAX Vs. NAGARI MILLS LTD. 227 I.T.R. 230. Looking to the facts of the case, in our opinion, the Tribunal did not commit any error while allowing depreciation under the provisions of Section 32 (1)(iii) of the Act to the assessee by setting aside the order passed by C.I.T. (Appeals)

15. As observed in the judgement referred to hereinabove by this Court, it is for the assessee to decide whether he should use or discard a particular machine which has become old or obsolete. In the instant case, as the patterns had become old and had become unserviceable and requisite entries had also been made in the books of accounts for discarding the said machinery.

16. Looking to the facts stated hereinabove, in our opinion, the Tribunal was justified in setting aside the order passed by the C.I.T. (Appeals), who had confirmed the order passed by the Assessing Officer whereby the amount claimed by the assessee for depreciation had been rejected.

17. In the circumstances, we answer all the questions in the affirmative i.e. in favour of assessee and against the revenue.

The Reference thus stands disposed of with no order as to costs.

(A.R. DAVE,J.)

(K.M. MEHTA,J.)

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